Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

CHRISTOPHER J. FINK,

Petitioner,

v.

GEORGE RYAN,
Secretary of State, State of Illinois,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 11-501.6 of the Illinois Motor Vehicle Code (625 ILCS 5/11-501.6) authorizes a law enforcement officer to collect blood, breath or urine from a driver, and have those fluids tested for the presence of alcohol or other drugs, if the driver is involved in a motor vehicle accident resulting in death or personal injury and that driver is issued a citation for any violation of the Vehicle Code, with the exception of an equipment violation. The fact that the officer has no probable cause to believe that the driver is impaired by alcohol or drugs, and the absence of any evidence indicating a causal relationship between the motor vehicle violation and the accident does not affect the officer's ability to collect said blood, breath or urine sample and have that sample tested.

The Trial Court found, *inter alia*, that Section 11-501.6 violated the Fourth Amendment of the United States Constitution, and the Secretary of State filed a direct Appeal to the Illinois Supreme Court. The Illinois Supreme Court reversed the Trial Court's decision. The question presented here is:

Whether law enforcement officials should be allowed to trample the Fourth Amendment rights of an individual by subjecting that individual to a search of his bodily fluids to obtain evidence of alcohol or drug use, absent a warrant or probable cause to believe that the individual is impaired by alcohol or drugs?

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PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER J. FINK ("FINK") respectfully prays that a Writ of Certiorari issue to review the Judgment and opinion of the Illinois Supreme Court entered in this proceeding on October 18, 1996.

OPINIONS BELOW

The opinion of the Illinois Supreme Court that gives rise to this Petition is reprinted in APPENDIX "A" hereto ("App. "A") at page App. 1. By Order filed December 2, 1996, the Illinois Supreme Court denied the Petition for Rehearing. That decision is reprinted in APPENDIX "B" hereto ("App. "B") at page App. 20.

JURISDICTION

On October 18, 1996, the Illinois Supreme Court overturned the decision of the Trial Court, and found that Section 11-501.6 of the Illinois Motor Vehicle Code did not violate the Fourth Amendment of the United States Constitution. FINK filed a timely Petition for Rehearing, which was denied on December 2, 1996. Pursuant to Supreme Court Rule 13.1, this Petition has been filed within ninety (90) days of the denial for rehearing.

The jurisdiction of the Court is invoked pursuant to 28 USC Section 1257.

STATUTES INVOLVED IN THIS CASE

Section 11-501.6 of the Illinois Motor Vehicle Code, as amended in 1994, provides:

> "(a) Any person who drives or is in actual control of a motor vehicle upon the public highways of this State and who has been involved in a personal injury or fatal motor vehicle accident, shall be deemed to have given consent to a breath test using a portable device as approved by the Department of Public Health or to a chemical test or tests of blood, breath or urine for the purpose of determining the alcohol or other drug content of such person's blood if arrested as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code or a similar provision of a local ordinance, with the exception of equipment violations contained in Chapter 12 of this Code, or similar provisions of local ordinances. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test, or both, has been administered. Compliance with this Section does not relieve such person from the requirements of Section 11-501.1 of this Code.
>
> (b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Section. In addition, if a driver of a vehicle is receiving medical treatment as a result of a motor vehicle accident,

any physician licensed to practice medicine, registered nurse or a phlebotomist acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol or other drugs, upon the specific request of a law enforcement officer. However, no such testing shall be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test, or submission to the test resulting in an alcohol concentration of 0.10 or more, or any amount of a drug, substance, or compound resulting from the unlawful use or consumption of cannabis, as covered by the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act as detected in such person's blood or urine, may result in the suspension of such person's privilege to operate a motor vehicle. The length of the suspension shall be the same as outlined in Section 6-208.1 of this Code regarding statutory summary suspension.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.10 or more, or any amount of a drug, substance or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, or a controlled substance listed in the Illinois Controlled Substances Act, the law enforcement officer shall immediately submit a

sworn report to the Secretary of State on a form prescribed by the Secretary, certifying that the test or tests were requested pursuant to subsection (a) and the person refused to submit to a test or tests or submitted to testing which disclosed an alcohol concentration of 0.10 or more, or any amount of a drug, substance or compound in such a person's blood or urine, resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, or a controlled substance listed in the Illinois Controlled Substances Act.

Upon receipt of the sworn report of a law enforcement officer, the Secretary shall enter the suspension to the individual's driving record and the suspension shall be effective on the 46th day following the date notice of the suspension was given to the person.

The law enforcement officer submitting the sworn report shall serve immediate notice of this suspension on the person and such suspension shall be effective on the 46th day following the date notice was given.

The cases where the blood alcohol concentration of 0.10 or more, or any amount of a drug, substance or compound resulting from the unlawful use or consumption of cannabis as listed in the Cannabis Control Act, or a controlled substance listed in the Illinois Controlled Substances Act, is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of such notice in an envelope with postage prepaid and addressed to such person at his address as shown on the Uniform

Traffic Ticket and the suspension shall be effective on the 46th day following the date notice was given.

Upon receipt of the sworn report of a law enforcement officer, the Secretary shall also give notice of the suspension to the driver by mailing a notice of the effective date of the suspension to the individual. However, should the sworn report be defective by not containing sufficient information or be completed in error, the notice of the suspension shall not be mailed to the person or entered to the driving record, but rather the sworn report shall be returned to the issuing law enforcement agency.

(e) a driver may contest this suspension of his driving privileges by requesting an administrative hearing with the Secretary in accordance with Section 2-118 of this Code, the Secretary may rescind, continue, or modify the order of suspension. If the Secretary does not rescind the order, a restricted driving permit may be granted by the Secretary upon application being made and good cause shown. A restricted driving permit may be granted to relieve undue hardship to allow driving for employment, educational, and medical purposes as outlined in Section 6-206 of this code. The provisions of Section 6-206 of this Code shall apply.

(f) (Blank)

(g) For the purposes of this Section, a personal injury shall include any type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A type A injury

> shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene."

625 ILCS 5/11-501.6

STATEMENT OF THE CASE

On December 18, 1994, a vehicle operated by FINK struck a telephone pole. FINK and a friend who was a passenger in the car, exited the vehicle and made their way to a nearby home from which the police and paramedics were called. At the time the police arrived to investigate the accident, paramedics were present and immobilizing FINK and his passenger with cervical collars and back boards for transport to a local hospital.

After completing his investigation of the accident scene, a police officer proceeded to the hospital and issued FINK a traffic ticket for failure to reduce speed to avoid an accident, a petty offense punishable by fine only. *See,* 625 ILCS Section 11-601(a) (West 1994). FINK was neither arrested nor charged with any other offenses at this time.

At the hospital, the arresting officer warned FINK of the consequences of taking a chemical test which revealed a blood alcohol content of .10 or greater, as well as the consequences of refusing to submit to any chemical test. *See,* 625 ILCS 11-501.6. After the warnings were given to FINK, the investigating officer directed FINK to take a blood test. FINK consented to testing and the blood sample revealed a blood-alcohol concentration ("BAC") of .14%.

Approximately one (1) week after the accident, FINK was served with notification that his driving privileges would be suspended for three (3) months. In addition, based upon FINK'S blood alcohol level of .14%, FINK was charged with the criminal offense of driving with a blood alcohol content of .10 or greater, in violation of 625 ILCS 11-501(a)(1) (West 1994). This particular charge is a Class A Misdemeanor, punishable by a fine of up to $1,000.00 and jail time in the County Jail of up to 364 days.

FINK filed a Motion in Limine in the criminal court to bar the use of the blood test results at trial, arguing that Section 11-501.6 violates the Fourth Amendment to the United States Constitution, as well as Article I, Section 6 of the Constitution of the State of Illinois. The Trial Court granted FINK'S Motion in Limine, and the State ultimately dismissed the criminal charge of driving with a blood alcohol content of .10 or greater.

Concurrent with the Motion in Limine, FINK also filed a civil Complaint for Declaratory Relief against then Secretary of State of the State of Illinois, GEORGE RYAN. In the Complaint for Declaratory Relief, FINK prayed that the Trial Court declare Sections 11-501.6 unconstitutional on its face as violative of the Fourth Amendment of the United States Constitution, as well as Article I, Section 6 of the Illinois Constitution. With respect to his Fourth Amendment argument, FINK argued that the statute allowed an unreasonable search of a driver by allowing a search and seizure of a driver's bodily fluids without requiring probable cause to believe that the driver was chemically impaired. In the State constitutional claim, FINK argued that the chemical testing violated a driver's right to be free from unreasonable

searches and that chemical testing was an unreasonable invasion of the driver's reasonable expectation of privacy.

The Trial Court accepted FINK'S arguments and held, in part, that Section 11-501.6 was unconstitutional in that it sanctioned an unreasonable search and seizure in violation of the Fourth Amendment to the United States Constitution.

On direct appeal, the Illinois Supreme Court reversed the Trial Court's holding. In four-to-three (4 to 3) decision, the Illinois Supreme Court held that the statute fell within the special needs exception of the Fourth Amendment finding that the statute authorizes chemical testing only in those situations in which a driver's expectation of privacy is diminished, the tests imposed upon the driver are minimally intrusive, and the use of the chemical test results in a criminal proceeding are incidental to the primary purpose of the statute – to reduce the destruction caused by drunken drivers on Illinois highways.

FINK'S Petition for Rehearing was denied.

REASONS FOR GRANTING THE WRIT

I. The Illinois Supreme Court's Opinion Minimizes The Privacy Interests Which Are Implicated By The Search And Fails To Acknowledge That The Governmental Interest Furthered By The Intrusion Would Not Be Placed In Jeopardy By A Requirement Of Individualized Suspicion.

The Illinois Supreme Court has misinterpreted and misapplied the "special needs" standard set forth by this Court in *Skinner v. Railway Labor Executives Association*, 489 U.S. 602 (1989). In *Skinner*, this Court reviewed the factors to be applied in determining whether such "special needs" exist, and stated, in pertinent part:

> " '[A] showing of individualized suspicion is not a constitutional floor, below which a search must be presumed unreasonable. [Citation omitted.] In limited circumstances, where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion.' "

Skinner v. Railway Labor Executives Association, 489 U.S. at 624.

The intrusion upon a motorist's reasonable expectation of privacy is significant. Although the State may regulate the operation of motor vehicles, it is well settled that an individual does not lose his reasonable expectation of privacy by virtue of his status as a driver. *Delaware v. Prouse*, 440 U.S. 648 (1979). When this Court upheld a stationery roadblock at which motorists were stopped in

a systematic manner for approximately 15 to 20 seconds, it cautioned:

> " 'A detention of particular motorists for more extensive field sobriety testing may require satisfaction of an individualized suspicion standard.' "

Michigan State Police v. Sitz, 496 U.S. 444, 451 (1990), citing *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). Here, the search does not involve field sobriety testing, but the extraction of bodily fluids, and the testing of those fluids without individualized suspicion of intoxication. This Court has previously held that compelling a person to submit to the piercing of his skin by a hypodermic needle so that his blood may be extracted significantly intrudes on the "personal privacy and dignity against unwarranted intrusions by the State" against which the Fourth Amendment protects. *Schmerber v. California*, 384 U.S. 757, 767 (1966). "Even a limited search of the outer clothing constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968). This Court has similarly described the taking of a suspect's fingernail scrapings as a " 'severe, though brief, intrusion upon cherished personal security.' " *Cupp v. Murphy*, 412 U.S. 291, 295 (1973), citing *Terry v. Ohio*, 392 U.S. at 24-25 (1973).

Against this backdrop, it is clear that "the withdrawal of blood, involving as it does the added aspect of physical invasion, is surely no less an intrusion. The surrender of blood on demand is, furthermore, hardly a quotidian occurrence." *Skinner v. Railway Labor Executives*

Association 489 U.S. 602, 644 (1989) (Justice Marshall, dissenting opinion).

In the case at bar, the circumstances under which an individual is subjected to a chemical test heightens the intrusiveness of the test. Under Section 11-501.6, the motorist's ability to leave the accident is subject to the predilections of the investigating officer. If the officer requests a breath test of a motorist, that motorist will be required to accompany the officer to a police station, and then be asked to sit in a processing room for at least 20 minutes. If the officer is not satisfied with the results of the breath test, then the motorist may be required to travel to a hospital so that a blood and/or urine test can be taken. 625 ILCS 11-501.6(a). The motorist is told, throughout this ordeal, that if he refuses any of these tests, then his driving privileges will be suspended for minimum period of six months. *Id.*

Moreover, the government's interest in promoting public safety can be achieved even with the requirement of individualized suspicion of intoxication. In the majority of cases, the arresting officer is trained and experienced in detecting signs of intoxication. Under Section 11-501.6, the officer has ample opportunity to use these skills since he must interview witnesses, including the drivers, in order to establish a basis for issuing a citation for a violation of the Motor Vehicle Code. If an officer can determine whether a driver violated a provision of the Motor Vehicle Code, it is not overly burdensome to require that same officer to determine probable cause that the driver involved in the accident may have been drinking. The officer will have an opportunity to talk to the driver, observe the driver's speech and the condition of

his eyes, check for an odor of alcohol emanating from the driver's person, and ask whether the driver had been drinking prior to the accident. Unfortunately, the Illinois Supreme Court failed to factor this component into its special needs analysis, and if it had, the balance of interests would have tipped in favor of individualized suspicion and the Court would have found that Section 11-501.6 violated the Fourth Amendment to the United States Constitution.

II. The True Legislative Intent Behind The Enactment Of Section 11-501.6 Is To Enable The Government To Gather And Use Evidence Of Intoxication In Criminal Prosecutions.

The State Supreme Court's reasoning that Section 11-501.6 was drafted to reduce the destruction caused by drunken drivers on Illinois highways, and that the use of those chemical test results in a criminal proceeding are "incidental" to the legislative purpose, is equally disingenuous. At the time that Section 11-501.6 was enacted into law, there was already legislation in place which suspended a motorist's driving privileges in the event there was probable cause to believe that motorist was operating a motor vehicle on a public highway while under the influence of alcohol or drugs. *See generally* 625 ILCS 11-501.1 (West 1994). Thus, it can hardly be said that the additional deterrent effect, if any, that Section 11-501.6 would provide justifies the search and testing of an individual's bodily fluids without the requisite probable cause of impairment.

Furthermore, according to Representative Ryder, the sponsor of this suspect legislation, "the prosecutor will still have the same tools which include the ability to use the results of the test in a criminal prosecution. The arrest is the triggering mechanism. It's not as if the test can be given to anyone, but it has to be someone that's involved in this accident and to whom a ticket has been issued." *See* **APPENDIX "C"**, at page App. 23 and 24.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Docket No. 79404 – Agenda 17 – May 1996.
CHRISTOPHER J. FINK, Appellee, v. GEORGE RYAN, Secretary of State, Appellant.

(Filed Oct. 18, 1996)

Justice MILLER delivered the opinion of the court:

This appeal results from a final order entered in the circuit court of Lake County finding a portion of the Illinois Vehicle Code (625 ILCS 5/11-501.6 (West 1994)) unconstitutional under the fourth amendment of the United States Constitution.

The portion of the Vehicle Code found unconstitutional provided that if a traffic accident occurred in which death or personal injury resulted and a driver involved in the accident had been issued a Uniform Traffic Ticket for a nonequipment offense, the driver would be subject to chemical testing to determine whether the person was impaired by drugs or alcohol. See 625 ILCS 5/11-501.6(a) (West 1994). Following the circuit court's ruling, the Secretary of State appealed directly to this court pursuant to Supreme Court Rule 302(a). 134 Ill. 2d R. 302(a). We reverse and remand.

I. BACKGROUND

The circuit court found section 11-501.6 of the Illinois Vehicle Code unconstitutional. The statute provides:

> "Any person who drives or is in actual control of a motor vehicle upon the public highways of this State and who has been involved in a personal injury or fatal motor vehicle accident, shall be deemed to have given consent to a

> breath test * * * or to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol or other drug content of such person's blood if arrested as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code or a similar provision of a local ordinance, with the exception of equipment violations contained in Chapter 12 of this Code, or similar provisions of local ordinances." 625 ILCS 5/11-501.6(a) (West 1994).

The statute further provides that a "personal injury shall include any type A injury." 625 ILCS 5/11-501.6(g) (West 1994). According to the statute, type A injuries "shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene." 625 ILCS 5/11-501.6(g) (West 1994).

The circuit court's rationale in finding the statute unconstitutional was that the statute was "no different, substantively" than a predecessor statute (Ill. Rev. Stat. 1991, ch. 95½ , par. 11-501.6) found unconstitutional by this court in *King v. Ryan*, 153 Ill. 2d 449 (1992). Because of the circuit court's reliance on *King*, a review of *King* is necessary.

This court in *King* held that the predecessor statute (Ill. Rev. Stat. 1991, ch. 95½ , par. 11-501.6) violated the fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution of 1970. The court found that the "special needs" exception to the fourth amendment did not apply to the predecessor statute. *King*, 153 Ill. 2d at 462. The court therefore believed the predecessor statute's provision for chemical testing of

a driver absent a warrant or probable cause determination was unconstitutional.

As expressed by the Supreme Court, the "special needs" exception to the fourth amendment states: "we have permitted exceptions [to the fourth amendment] when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.' " *Griffin v. Wisconsin*, 483 U.S. 868, 873-74, 97 L. Ed. 2d 709, 717, 107 S. Ct. 3164, 3168 (1987), quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351, 83 L. Ed. 2d 720, 741 105 S. Ct. 733, 748 (1985) (Blackmun, J., concurring in judgment). The Supreme Court has found the warrant and probable cause requirement impracticable in a variety of circumstances. Some of these circumstances include: searches of government employees' desks and offices (*O'Connor v. Ortega*, 480 U.S. 709, 94 L. Ed. 2d 714, 107 S. Ct. 1492 (1987)); searches of certain types of student property by school officials (*T.L.O.*, 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733); roadblock searches identifying drunk drivers (*Michigan Department of State Police v. Sitz*, 496 U.S. 444, 110 L. Ed. 2d 412 110 S. Ct. 2481 (1990)); roadblock searches identifying illegal immigrants (*United States v. Martinez-Fuerte*, 428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976)); chemical testing of railroad employees (*Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 103 L. Ed. 2d 639, 109 S. Ct. 1402, (1989)); and administrative searches of regulated businesses (*New York v. Burger*, 482 U.S. 691, 96 L. Ed. 2d 601, 107 S. Ct. 2636 (1987)).

The court in *King* noted that under the "special needs" exception, a search or seizure may be reasonable absent individualized suspicion in two types of cases: (1)

when the intrusion upon the person to be searched is minor; or (2) when the person to be searched has a diminished expectation of privacy. *King*, 153 Ill. 2d at 458-59. The court concluded that the person to be tested under the predecessor statute in *King* fell into neither of these two categories.

In addition, the *King* court believed that under the Illinois Constitution's right of privacy (Ill. Const. 1970, art. I, § 6) a driver could not be subject to chemical testing when the driver had not been charged with an offense based upon probable cause. *King*, 153 Ill. 2d at 464-65. Accordingly, the court found that the statute violated the Illinois Constitution as well.

II. THE PRESENT CASE

On the evening of December 18, 1994, Christopher J. Fink drove his car into a telephone pole. Fink's friend, Jeffrey Almeit, was a passenger in the car. Fink and Almeit exited the car and found their way to a nearby house. Paramedics and the police were called. When the police arrived, paramedics were immobilizing Fink and Almeit with cervical collars and back boards. The two were transported to a local hospital. Before proceeding to the hospital, police officers investigated the accident scene.

At the hospital, Fink was issued a traffic ticket for failure to reduce speed to avoid an accident. See 625 ILCS 5/11-601(a) (West 1994). An officer requested that Fink submit to a blood-alcohol content test and Fink was warned of the consequences if he refused – the suspension of his driver's license. See 625 ILCS 5/11-501.6(c),

(d) (West 1994). Fink consented to a blood test and a nurse drew a blood sample. The sample revealed a blood-alcohol concentration of 0.14. Later that night, Fink was released from the hospital.

The State attempted to proceed against Fink in two ways. First, the State sent Fink notice that his driver's license was to be suspended for three months pursuant to sections 11-501.6 and 6-208.1 (625 ILCS 5/11-501.6, 6-208.1 (West 1994)). Second, Fink was charged with driving under the influence of alcohol (DUI). See 625 ILCS 5/11-501(a)(1) (West 1994). The DUI citation was premised upon the 0.14 blood-alcohol content test result obtained under section 11-501.6 (625 ILCS 5/11-501.6 (West 1994)).

Fink filed a civil complaint for declaratory judgment asking the circuit court to declare section 11-501.6 (625 ILCS 5/11-501.6 (West 1994)) unconstitutional on its face as a violation of the fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution. In the federal constitutional claim, Fink argued that the statute allowed an unreasonable search of a driver without probable cause to believe that the driver was chemically impaired. In the state constitutional claim, Fink argued that chemical testing violated a driver's right to be free from unreasonable searches and that chemical testing invaded a driver's right of privacy.

The circuit court agreed with Fink, stating in its final order: "That because the chemical tests results can still be used in a criminal proceeding, the current version of Section 11-501.6 is no different, substantively, than the 1991 version of the Statute which was struck down as

unconstitutional in the case of *King v. Ryan* * * * ." In addition, the circuit court stated "the 1994 version of 625 ILCS 5/11-501.6 is hereby declared unconstitutional in that it sanctions unreasonable searches and seizures in violation of the Fourth Amendment of the United States Constitution."

Because of the circuit court's ruling, Fink's driver's license was not suspended and the 0.14 blood-alcohol content test result became inadmissible in the DUI prosecution. Without this evidence, the State moved to dismiss the DUI prosecution. The circuit court allowed the State's motion. The Secretary of State appealed directly to this court (134 Ill. 2d R. 302(a)) for review of the circuit court's holding that section 11-501.6 is unconstitutional.

III. DISCUSSION

Because a statute is presumed to be constitutional (*People v. Miller*, 171 Ill. 2d 330, 333 (1996)), Fink "has the burden of clearly establishing [the statute's] constitutional infirmity." *People v. Hickman*, 163 Ill. 2d 250, 257 (1994). Given this court's ruling in *King*, we may assume the legislature enacted the changes found in section 11-501.6 to address the constitutional concerns expressed in that case. "Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *Hickman*, 163 Ill. 2d at 262.

The purpose of the amended statute, though not explicitly stated, may be found in its language and structure: to reduce the dangers posed by chemically impaired drivers by providing for the suspension of their licenses

and by deterring others from engaging in similar misconduct. As *King* observed, "the State has a compelling interest in protecting its citizens from the hazards caused by intoxicated drivers." *King*, 153 Ill. 2d at 461. To the extent that a statute removes chemically impaired drivers from the road "without relying on criminal sanctions, it serves the State's interests beyond the need for normal law enforcement." *King*, 153 Ill. 2d at 461.

Illinois has a special need to suspend the licenses of chemically impaired drivers and to deter others from driving while chemically impaired. See *King*, 153 Ill. 2d at 461. This specialized need goes beyond the need for normal law enforcement. Thus, a search may be reasonable absent individualized suspicion if a chemical test is nonintrusive or a driver's expectation of privacy has been reduced. See *King*, 153 Ill. 2d at 458-59.

A. Constitutionality Under the Fourth Amendment of the United States Constitution

Presented with the problems caused by chemically impaired drivers in the state, the legislature enacted the statute later declared unconstitutional in *King*. In response to this court's holding in *King*, the legislature amended the statute by: (1) deleting the requirement that chemical testing be premised upon a driver's fault in causing an accident; (2) deleting the provision that chemical test results could be used in civil and criminal proceedings; (3) adding a requirement that chemical testing be premised upon the issuance of a Uniform Traffic Ticket for a non-equipment traffic offense; and (4) defining with more particularity the types of "personal injury" that

trigger the chemical testing provision. Compare Ill. Rev. Stat. 1991, ch. 95½ , par. 11-501.6, with 625 ILCS 5/11-501.6 (West 1994).

The legislature did not alter two components in the statute. First, the legislature retained the implied-consent provision of the predecessor statute. Second, the legislature did not require an individualized suspicion of chemical impairment before subjecting a driver to chemical testing. Compare Ill. Rev. Stat. 1991, ch. 95½ , par. 11-501.6, with 625 ILCS 5/11-501.6 (West 1994).

We believe that the changes made by the legislature in response to *King* reduce the intrusiveness of chemical testing and allow for testing only in those situations in which a driver's expectation of privacy is diminished. Like the railroad industry in *Skinner*, 489 U.S. 602, 103 L. Ed. 2d 639, 109 S. Ct. 1402, and the junkyard business in *Burger*, 482 U.S. 691, 96 L. Ed. 2d 601, 107 S. Ct. 2636, the highways of Illinois are highly regulated. The Vehicle Code comprises 404 pages in the Illinois Compiled Statutes (West 1994) covering a broad range of subjects from ambulances (625 ILCS 5/1-102.01 (West 1994)) to school zones (625 ILCS 5/11-605 (West 1994)).

Although a driver does not "lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation" (*Delaware v. Prouse*, 440 U.S. 648, 662, 59 L. Ed. 2d 660, 673, 99 S. Ct. 1391, 1400 (1979)), the regulation of automobiles in Illinois reduces a driver's expectation of privacy. While driving on the road, one reasonably expects less privacy than one expects within the confines of a residence. As the Supreme Court has noted in the context of border

checkpoints, "one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." *Martinez-Fuerte*, 428 U.S. at 561, 49 L. Ed. 2d at 1130 96 S. Ct. at 3084-85.

Further, under the predecessor statute, personal injury included any injury requiring "immediate professional attention in either a doctor's office or a medical facility." Ill. Rev. Stat. 1991, ch. 95½ , par. 11-501.6(g). Under the amended statute, the legislature narrowed the spectrum of drivers subject to chemical testing. Under section 11-501.6(g), personal injuries "shall include any type A injury * * * [which] * * * shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene." 625 ILCS 5/11-501.6(g) (West 1994). We believe that the legislature in amending the statute intended to limit the personal injury requirement of section 11-501.6 to type A injuries. We further believe that type A injuries are limited to those listed in section 11-501.6(g) (625 ILCS 5/11-501.6(g) (West 1994)).

Accidents involving a fatality still trigger the chemical testing provision. However, personal injury requiring only a visit to a doctor's office or a medical facility no longer can be the basis for testing. Thus, the legislature's more particularized definition of type A injuries subjects a driver to chemical testing in only the more serious accidents. No reasonable driver expects to leave the scene of a serious accident moments after its occurrence. With law enforcement personnel investigating the accident and other personnel attending to the participants' physical conditions, a driver expects less privacy.

In addition, any driver subject to chemical testing under the amended statute has a statutory duty to remain at the scene of the accident, render aid to injured parties, and exchange basic information with those involved. See 625 ILCS 5/11-401, 11-403 (West 1994). Given the amount of time required to attend to law enforcement and emergency medical needs, the addition of a chemical test is minimally intrusive. Thus, by the very nature of the circumstances in which drivers find themselves, the legislature has imposed testing only when a driver's expectation of privacy has been diminished and a test is minimally intrusive.

Finally, the amended statute premises chemical testing on an "arrest [ ] as evidenced by the issuance of a Uniform Traffic Ticket" for a nonequipment violation of the Vehicle Code. 625 ILCS 5/11-501.6(a) (West 1994). Drivers issued Uniform Traffic Tickets are released only after posting bail in the form of a current Illinois driver's license, a bond certificate, or cash. 155 Ill. 2d R. 526. In *Terry v. Ohio*, the Supreme Court noted that "[a]n arrest * * * is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows." *Terry v. Ohio*, 392 U.S. 1, 26, 20 L. Ed. 2d 889, 909 88 S. Ct. 1868, 1882 (1968). Because the movement of an arrested driver is already subject to restrictions, the administering of a chemical test poses a minimal additional intrusion.

In sum, we believe that under the amended statute (625 ILCS 5/11-501.6 (West 1994)), a driver will be subject to chemical testing only in situations in which the intrusiveness of the search has been reduced and a driver's

expectation of privacy has been diminished. The intrusion upon an arrested driver is minimal or nonexistent depending upon the length of time required by law enforcement personnel to process the accident scene and emergency medical personnel to attend to the injured parties. Additionally, a driver's expectation of privacy is diminished because a driver is operating a vehicle in a highly regulated environment.

Thus, we conclude the legislature has enacted a statute that falls within the "special needs" exception to the fourth amendment. The State of Illinois has a special need beyond the normal needs of law enforcement to determine whether drivers are chemically impaired and to suspend those drivers' licenses. Under the limitations contained in the amended statute, drivers are subject to chemical testing only when testing will be minimally intrusive and only after a driver's expectations of privacy have been further diminished by the factors set forth in the statute.

Fink argues, however, that the "special needs" exception to the warrant and probable cause requirement is inapplicable because the chemical test results may be used in a criminal proceeding. For several reasons, Fink's claim fails.

In support of his argument, Fink points to comments by the *King* court that the predecessor statute fell outside the "special needs" exception because "one of the stated purposes of the search is to gather evidence for criminal prosecution." *King*, 153 Ill. 2d at 462. However, as noted elsewhere in *King*, (153 Ill. 2d at 459-60), the Supreme Court has not yet determined whether evidence obtained

under the "special needs" exception may be routinely used in criminal proceedings. See *Skinner*, 489 U.S. at 621 n.5, 109 S. Ct. at 1415 n.5. *King* recognized that "the Supreme Court has upheld searches under this special exception even though evidence obtained during the search was also used in a criminal trial." *King*, 153 Ill. 2d at 462. In those instances in which searches were upheld, "the evidence was found incidentally during a search which was constitutionally valid under the special needs exception." *King*, 153 Ill. 2d at 462. If the admission of chemical test results in a criminal proceeding is incidental to a statute's purpose, application of the "special needs" exception is not precluded.

Following *King*, the legislature chose to delete those provisions contained in the former statute that allowed the use of chemical test results in criminal proceedings. Compare Ill. Rev. Stat. 1991, ch. 95½ , pars. 11-501.6(e), (f), with 625 ILCS 5/11-501.6(e), (f) (West 1994). As we have already noted, the purpose of the statute is to reduce the destruction caused by drunken drivers on Illinois highways. This goal can be accomplished through civil suspension proceedings of those who fail the test, as well as through the provisions suspending the licenses of persons who refuse to submit to chemical testing. By deleting any reference in the amended statute to the use of test results in criminal proceedings, the legislature has made clear that criminal prosecution is only incidental to the primary purpose of the statute. Because the use of test results in other proceedings is incidental to the amended statute's purpose, the "special needs" exception to the warrant and probable cause requirement remains applicable. *King*, 153 Ill. 2d at 462.

B. Constitutionality Under Article I, Section 6, of the Illinois Constitution

In the proceedings below, Fink also argued that the amended statute violated article I, section 6, of the Illinois Constitution. The trial judge did not resolve this issue and instead based his decision solely on the fourth amendment. Fink renews his state constitutional argument here in support of the circuit court's judgment in his favor.

Article I, section 6, of the Illinois Constitution provides:

> "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means." Ill. Const. 1970, art. I, § 6.

This court has construed the search and seizure language found in section 6 in a manner that is consistent with the Supreme Court's fourth amendment jurisprudence. *People v. Mitchell,* 165 Ill. 2d 211, 219 (1995); *People v. Tisler,* 103 Ill. 2d 226, 245 (1984). Because the amended statute falls within the "special needs" exception to the fourth amendment, we believe that it also comports with the search and seizure provision of article I, section 6, of our state constitution.

The additional recognition in section 6 of a zone of personal privacy does not alter our analysis. As we have already determined, a driver has a reduced expectation of

privacy in those circumstances in which the amended statute is applicable, for the driver has been involved in a serious accident while operating a vehicle in a highly regulated environment and, moreover, is under arrest, as evidenced by the receipt of a traffic ticket.

Contrary to Fink's argument, this court's earlier decision in *King* does not control the resolution of this question. The *King* court believed that the prior statute violated the privacy provision of the Illinois Constitution because drivers could be tested even though they had not been arrested and even though there was no probable cause to believe they had committed an offense. *King*, 153 Ill. 2d at 464-65. Under the amended statute, however, no driver is chemically tested unless the person has been arrested, based on the existence of probable cause, for a nonequipment violation of the Vehicle Code. We thus believe that a driver's zone of privacy is not unconstitutionally invaded when a driver is chemically tested pursuant to section 11-501.6, and we therefore conclude the amended statute does not violate article I, section 6, of the Illinois Constitution.

IV. CONCLUSION

For the foregoing reasons, we uphold the constitutionality of section 11-501.6 (625 ILCS 5/11-501.6 (West 1994)). The statute passes constitutional scrutiny under both the fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution of 1970. Therefore, we reverse the circuit court's judgment. This cause is remanded to the circuit court of Lake County for further proceedings.

Reversed and remanded.

Chief Justice BILANDIC, dissenting:

I am not persuaded by the majority's attempt to distinguish the instant statute from the 1991 version of the same statute that this court declared unconstitutional in *King v. Ryan*, 153 Ill. 2d 449 (1992). As the trial court determined, the current statute is "no different, substantively," from the 1991 statute. If *King* correctly declared the 1991 statute unconstitutional, then we should likewise hold that the current statute is unconstitutional. If, on the other hand, the court now wishes to reconsider and reject the majority opinion in *King*, it should do so expressly.

Instead, the majority makes a disingenuous and unpersuasive attempt to reconcile its decision with *King*. The majority claims that the current statute is different in several respects from its predecessor, and that these differences support a conclusion that the current statute is constitutional. The purported distinctions, however, are illusory and do not justify or permit a conclusion different from that reached in *King*.

The current statute, like its predecessor, essentially provides that drivers give implied consent to the chemical testing of their breath, blood or urine to determine its blood-alcohol or drug content whenever a police officer determines that the driver has been in an accident that resulted in death or personal injury and that the driver committed a traffic violation. Neither statute required any individualized suspicion that the driver was under the influence of alcohol or drugs. The only differences between the two statutes are that (1) the current statute

defines "personal injury" slightly differently than the 1991 statute; (2) under the current statute, the police officer must give the driver involved in the accident a traffic ticket, while the former statute required the officer to determine that the affected driver was "at fault" in causing the accident; and (3) the current statute, unlike the 1991 version, does not *expressly state* that the test results may be used in criminal proceedings, but permits the use of test results in such proceedings.

In *King* this court declared the 1991 statute unconstitutional, in part, because it violated the fourth amendment of the United States Constitution. The court found that the provision that authorized chemical testing of a driver without a warrant or probable cause was unconstitutional. The *King* court concluded that the "special needs" exception to the fourth amendment's warrant requirement did not apply to the statute. *King*, 153 Ill. 2d at 462.

Despite the obvious similarity between the current statute and the 1991 version found unconstitutional in *King*, the majority nevertheless finds that the current statute does not violate the fourth amendment. In reaching this conclusion, the majority opinion, like the *King* opinion, considers the "special needs" test. Unlike *King*, however, the majority finds that the current statute satisfies all of the requirements of that test.

The majority first notes that the regulation of highways and automobiles reduces a driver's expectation of privacy. The majority acknowledges that the *King* opinion found that such regulation is insufficient to excuse the warrant requirement. The majority "distinguishes" *King*,

however, on the basis of a supposedly "narrower" definition of "personal injury" in the current statute. In fact, the definition of "personal injury" under the current statute is no narrower than under its predecessor. Both statutes governed only those drivers involved in serious automobile accidents. The majority here, unlike the *King* majority, simply concludes that drivers involved in serious accidents have a diminished expectation of privacy that justifies a warrantless search. I continue to agree with the *King* court's conclusion that such drivers do not necessarily have a diminished expectation of privacy that justifies subjecting them to a warrantless search without any requirement of individualized suspicion.

The majority here also finds that the search authorized under the current statute is "minimally intrusive" and thus satisfies the second prong of the "special needs" test. In reaching this conclusion, the majority notes that the driver subjected to the search is already required to remain at the scene of a serious accident while medical assistance is rendered to injured persons. The opinion also notes that the search is permitted only when the driver is "arrested as evidenced by the issuance of a Uniform Traffic Ticket."

The majority fails to adequately explain why these two factors alter the *King* court's conclusion that the warrantless search at issue is *not* minimally intrusive. *King* concluded that a warrantless search to determine the blood-alcohol content of a person's breath, blood or urine is intrusive and that the 1991 statute authorizing such a search therefore did not satisfy the second prong of the "special needs" test. *King*, 153 Ill. 2d at 462-63. At the

time the *King* court declared the 1991 statute unconstitutional, drivers were also required to remain at the scene of a serious accident. See Ill. Rev. Stat. 1991, ch. 95½, par. 11-403. The *King* court nevertheless found that warrantless search at issue was an "intrusive" search. *King*, 153 Ill. 2d at 462-63. Similarly, *King* found the search intrusive even though the police officer conducting the search was first required to conclude that the driver was partially "at fault" in causing the accident. I fail to see why a different conclusion is permissible here simply because the officer must now issue a written traffic ticket. The current statute is arguably even more intrusive than its predecessor, which required a police officer to determine that there was some link between the motorist's driving and the accident. Under the current statute, no such causal link is required. If a motorist is charged with *any* offense under the motor vehicle code (with the exception of an equipment violation), then that person is susceptible to a search regardless of whether the motorist is responsible for the accident. The purported "distinctions" cited in the majority opinion between the current statute and the statute declared unconstitutional in *King* are not substantive differences, but simply excuses used to justify a conclusion inconsistent with that reached in *King*.

The majority finally concludes that the current statute serves the State's needs, beyond the need for normal law enforcement. The majority distinguishes the 1991 statute on the ground that the current statute deletes the provision which *expressly authorized* the use of test results in criminal proceedings. The *King* court cited this provision as evidence that the search permitted under the 1991 statute did not serve special needs, *beyond the needs of law*

enforcement, because "one of the stated purposes of the search is to gather evidence for criminal prosecution." *King*, 153 Ill. 2d at 462. The majority here finds that the legislature, by deleting the provision expressly authorizing the use of search results in criminal proceedings, has demonstrated that criminal prosecution is incidental to the primary purpose of the statute. I disagree.

The *King* court determined that, to the extent that the 1991 statute relied upon *criminal sanctions* to accomplish the state's goal of deterring drunk driving and removing drunk drivers from the road, the statute did not serve the state's interests beyond the need for law enforcement. The majority opinion acknowledges, as it must, that search results will routinely be used in criminal proceedings. Moreover, a review of the legislative history reveals that the current statute, like its predecessor, was intended to secure evidence for use in criminal proceedings against intoxicated motorists. To suggest that the deletion of the provision expressly authorizing the use of search results in criminal proceedings renders the statute constitutional simply exalts form over substance. If *King* correctly declared the 1991 statute unconstitutional, none of the distinctions raised in the majority opinion between the 1991 statute and the current statute justify a contrary finding here. The majority's analysis is consistent only with the dissenting opinions in *King*. Because I continue to adhere to *King*, I respectfully dissent.

Justices HARRISON and NICKELS join in this dissent.

APPENDIX B

(SEAL)

SUPREME COURT OF ILLINOIS
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December 2, 1996

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No. 79404 – Christopher J. Fink, appellee, v. George Ryan, Secretary of State, etc., appellant. Appeal, Circuit Court (Lake).

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on December 12, 1996.

APPENDIX C

STATE OF ILLINOIS
88th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

* * *

58th Legislative Day May 12, 1993

Thank you."

Speaker Currie: "Further discussion? If not, the question is, 'Shall this Bill pass?' All in favor vote 'aye'; opposed vote 'no'. Voting is open. Have all voted who wish? Have all voted who wish? The Clerk will take the record. On . . . Dunn, 'aye'. Dunn, 'aye'. On Senate Bill 905, 108 voting 'aye', 1 voting 'no'; this Bill, having received the Constitutional Majority, is hereby declared passed. The next Bill is . . . the next Bill, Representative Ryder seems to be on a roll, Senate Bill 906. Are you ready with that Bill? Out of the record. (Senate Bill) 907, Representative Ryder, are you ready for that Bill? Clerk, read the Bill."

Clerk McLennand: "Senate Bill 907, a Bill for an Act to amend the Illinois Vehicle Code. Third Reading of the Bill."

Speaker Currie: "Representative Ryder."

Ryder: "Thank you. This amends the Illinois Vehicle Code and changes provisions governing implied consent for chemical tests when a driver's been involved in a personal injury or a fatal motor vehicle accident. The threshold is the arrest, and it authorizes the kinds of tests

that are necessary. There was no controversy in committee, but I'm glad to answer any questions should there be any."

Speaker Currie: "Representative Ryder moves 'do pass' on Senate Bill 907; and, on that Motion, Representative Dart."

Dart: "Thank you. Will the Sponsor yield?"

Ryder: "Of course."

Speaker Currie: "He will."

Dart: "Just a couple quick questions. I understand that this is in response to the King versus Ryan case."

Ryder: "Yes. That's correct."

Dart: "In certain respects . . . my reading of this, it looks as if there's a couple things. I just glanced at the King case here, and apparently there's a couple things that are not in direct response to the case that I just have some questions regarding. The one in particular is . . . the . . . we're removing the ability of the . . . basically the prosecutor to utilize these tests in a criminal proceeding. I don't see the King case saying that we must do that. I'm wondering why are we doing that. In these instances where there is an accident and they use a blood alcohol test of some type, that we're removing the provision which would allow them to use it in a criminal proceeding. Why are we doing that?"

Ryder: "Representative, if your reading of the case would indicate that this provision of the law is not recommended in that case, I certainly won't argue with

that. It is this particular provision is in response to that case, but I believe it also carries with it recommendations from the advisory task force concerning driving under the influence which advises the Secretary of State. I think . . . I'm not sure that I agree with your reading, but assuming that your reading is correct of what's involved within this Bill, I would suggest that is done so that the . . . the ability to take the test is more readily available if they know that it's not going to be used in a prosecution."

Dart: "Yeah, but see my problem, and I apologize. I just read the case today, and in this section here when I was lookin' at the Bill, they deleted the section which dealt with allowing the . . . basically what would be the prosecutor to use the breathalyzer test in the case itself, the criminal case. That was what was in the law. He could use that. Under this now, that provision's being deleted, and I don't see it being put back in. So what I see possibly happening . . . I could be misreading this, but the way I'm looking at it, it looks as if an individual is involved with a car accident, submits to the blood alcohol test, whether its being drawn by blood or machine, the state cannot later use that test in the criminal proceeding."

Ryder: "Now, I understand the extent of your question, and I apologize if my previous remark misled. That is not the intention of the Bill. That is not my reading of the Bill. The prosecutor will still have the same tools which include the ability to use the results of the test in a criminal prosecution. The arrest is the triggering mechanism. It's not as if a test can be given to anyone,

but it has to be someone that's involved in this accident and to whom a ticket has been issued."

Dart: "Yeah, and in that part I see in that . . . that responds to the case and that part looked fine. The part that worried me was just the part that was deleted on page 12, line 23 and below, and I was just wondering if somewhere else it . . . that's a provision which said the test results can be used in a civil or a criminal case. I'm just wondering if we put it back in somewhere where it says that you can still use these in a criminal case 'cause I understand where you're coming from on this, and I agree with it, but I'm just worried that we're removing a provision so that a defense attorney can go into court now and file a motion saying that the prosecutor is barred from using the test results in the criminal case because that provision has been removed from the statute."

Ryder: "Representative, I understand the point that you're making. I would not want that to occur either . . . "

Dart: "Yeah . . . "

Ryder: " . . . and that's clearly not the intention of the Sponsor. I believe that the concern that you have is covered and that language is within the law . . . "

Dart: "In another section somewhere?"

Ryder: "In another section, I believe . . . "

Dart: "Well, if that's the case, that's fine."

Ryder: "Okay. I'm glad I satisfied you on that one. Okay. Anything further?"

Speaker Currie: "Further discussion?"

Ryder: "Okay. Thank you."

Speaker Currie: "Representative DeJaegher."

DeJaegher: "Madam Speaker, just as a matter of personal privilege, your friend, my friend, everybody's friend is having his 60th anniversary. There is cake here. Jack McGuire."

Speaker Currie: "The question is, 'Shall Senate Bill 907 pass?' All in favor vote 'aye'; opposed vote 'no'. Voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? The Clerk will take the record. On this Motion, there are 111 voting 'yes', 0 voting 'no'; and this Bill, having received the required Constitutional Majority, is hereby declared passed. The Clerk for a Supplemental Calendar announcement and Representative Flowers, in the Chair."

Clerk McLennand: "Supplemental Calendar #1, the Agreed Bill List is being distributed."

Speaker Flowers: "Representative Ryder, on House Bill 908."

Ryder: "Thank you. This is the last in a series of Bills on behalf of the Secretary of State."

Speaker Flowers: "Representative Ryder."

Ryder: "Oh, certainly."

Speaker Flowers: "Mr. Clerk, would you please read the Bill?"

Clerk McLennand: "Senate Bill 908, a Bill for an Act to amend the

* * *